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AUG 31 2006

In re Application of
Brady et al.
Application No. 10/726,851
Filed: December 2, 2003
Attorney Docket No.
03-971

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This is a decision on the Petition Under 37 CFR 1.78(a)(3),
filed August 5, 2005, to accept an unintentionally delayed claim
under 35 U.S.C. § 120 for the benefit of prior filed
nonprovisional application No. 10/685,907.

This Petition is hereby **dismissed**.

Applicable Law

A petition for acceptance of a claim for late priority under 37
CFR 1.78(a)(3) is only applicable to those applications filed on
or after November 29, 2000. Further, the petition is
appropriate only after the expiration of the period specified in
37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR
1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37
CFR 1.78(a)(2)(i) of the prior-filed
application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the
date the claim was due under 37 CFR 1.78(a)(2)(ii)
and the date the claim was filed was unintentional.

The Director may require additional information
where there is a question whether the delay was
unintentional.

The instant petition does not comply with item (1) above.

As to (1), the amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment is physically part of the petition and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).¹

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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 Post Office Box 1450
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By hand: Customer Service Window
 Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
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Any questions concerning this matter may be directed to Attorney Derek L. Woods at (571) 272-3232.


Frances Hicks
Lead Paralegal
Office of Petitions

¹ The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).